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complete official record of every proceeding.

[36 FR 11574, June 16, 1971, as amended at 63 FR 66051, Dec. 1, 1998]

§ 957.27 Suspension.

(a) Any firm or individual suspended under chapter 3, section 7 of the Postal Service Purchasing Manual who believes that the suspension has not been in accordance with the provisions thereof, or with applicable laws or regulations, may appeal to the Judicial Officer for a review of the suspension.

(b) Any such appeal shall be addressed to the Judicial Officer through the Vice President who ordered the suspension within 20 days of the date upon which the respondent has been notified of the suspension. Such appeal shall concisely and in the manner of a pleading set forth the grounds upon which the suspension is contested and may be supported by a brief and such evidence as the respondent may desire to submit.

(c) Should the respondent desire oral argument or a hearing before the Judicial Officer in connection with the appeal, application therefor shall be included in the appeal. In the event that the Judicial Officer grants the respondent's application for a hearing the notice of suspension and the appeal shall constitute the pleadings defining the issues therein and the hearing shall be regulated in accordance with the rules in this part concerning debarment proceedings.

(d) The decision of the Judicial Officer in any appeal shall constitute the final agency determination of the issues presented thereby. Either party thereto may, however, file a motion for reconsideration thereof, in accordance with the provisions of § 957.22.

[36 FR 11574, June 16, 1971, as amended at 41 FR 19309, May 12, 1976; 63 FR 66051, Dec. 1, 1998]

§ 957.28 Ex parte communications.

The provisions of 5 U.S.C. 551(14), 556(d) and 557(d) prohibiting ex parte communications are made applicable to proceedings under these rules of practice.

[42 FR 5358, Jan. 28, 1977]

39 CFR Ch. I (7-1-01 Edition)

PART 958—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO THE REFUSAL TO PROVIDE POST OFFICE BOX OR CALLER SERVICE AND THE TERMINATION OF POST OFFICE BOX OR CALLER SERVICE

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AUTHORITY: 39 U.S.C. 204, 401.

SOURCE: 36 FR 11578, June 16, 1971, unless otherwise noted.

§ 958.1 Authority for rules.

The Judicial Officer promulgates the rules in this part pursuant to authority delegated by the Postmaster General.

§ 958.2 Scope of rules.

The rules in this part shall be applicable to cases in which a postmaster has issued a Determination denying an application for post office box or caller service, or terminating the box or caller service being provided to a customer, and in which a Petition in opposition to that Determination has been filed.

[46 FR 62847, Dec. 29, 1981]

§ 958.3 Petition; notice of hearing; answer; summary judgment.

(a) *Petition.* Any applicant or customer who receives a postmaster's Determination may oppose it by filing, in triplicate, a written Petition stating his reasons for opposing the Determination. The Petition, signed by the Petitioner or his attorney, shall be filed by sending the Petition via certified mail to the postmaster who issued the Determination, or by otherwise delivering it to the postmaster's

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office. The Petition must be filed within twenty days (Sundays and holidays included) after the date on which the Petitioner received the Determination. The postmaster shall immediately forward two copies of the Petition to the Recorder, Judicial Officer Department, U.S. Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201-3078.

(b) *Notice of hearing.* On receipt of the Petition, the Recorder shall schedule a hearing on a date not later than 30 days after the date of receipt. A Notice of Hearing shall be sent to the Petitioner. A copy of the Notice of Hearing and the Petition shall be sent to the General Counsel of the U.S. Postal Service.

(c) *Answer.* The General Counsel of the Postal Service shall file an Answer to the Petition within fifteen days after the date the General Counsel received a copy of the Petition from the Recorder.

(d) *Summary judgment.* Upon motion of either the General Counsel or the Petitioner, or on his or her own initiative, the presiding officer may find that the Petition and Answer present no genuine or material issues of fact requiring an evidentiary hearing and may thereupon render an initial decision granting or dismissing the Petition. The initial decision shall become the final agency decision if a timely appeal is not taken.

[46 FR 62847, Dec. 29, 1981, as amended at 63 FR 66052, Dec. 1, 1998]

§ 958.4 Hearings.

Hearings are held at 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201-3078, or such other location as may be designated by the presiding officer. Not later than 5 days prior to the date fixed for the hearing, a party may file a request that a hearing be held to receive evidence in his behalf at a place other than that designated for hearing in the notice. He shall support his request with a statement outlining: (a) The evidence to be offered in such place; (b) the names and addresses of the witnesses who will testify; (c) the reasons why such evidence cannot be produced at Arlington, VA. The presiding officer shall give consideration to the convenience and necessity of the parties and

the relevancy of the evidence to be offered.

[36 FR 11578, June 16, 1971, as amended at 38 FR 17217, June 29, 1973; 63 FR 66052, Dec. 1, 1998]

§ 958.5 Election as to hearing.

If both parties so elect, they may waive an oral hearing and submit the matter for decision on the basis of the appeal and answer, with the approval of the presiding officer and subject to the right of the presiding officer to require the parties to furnish such further evidence or such briefs as the presiding officer may deem necessary. The request to waive oral hearing shall be mailed to the presiding officer not later than 10 days prior to the date set for the hearing.

§ 958.6 Default.

If a person who has not waived oral hearing fails, without notice or without adequate cause, satisfactory to the presiding officer, to appear at the hearing, the presiding officer shall issue an order dismissing the appeal. If no protest to such order of dismissal is received within 10 days from the date of issuance of the order, such order shall become final. Any protest to the order of dismissal received within 10 days from the date of its issuance shall be given such consideration as the presiding officer deems to be warranted by the facts and circumstances alleged in the protest. An order of dismissal issued under this section by an Administrative Law Judge may be appealed to the Judicial Officer within 10 days from the date of the order.

[36 FR 11578, June 16, 1971, as amended by 42 FR 30504, June 15, 1977]

§ 958.7 Presiding officers.

The presiding officer at any hearing shall be an Administrative Law Judge qualified in accordance with law, or the Judicial Officer (39 U.S.C. 204). The Chief Administrative Law Judge shall assign cases to Administrative Law Judges by rotation so far as practicable. The Judicial Officer may, for good cause shown, preside at the reception of evidence in proceedings where expedited hearings are requested by either party. When the Judicial Officer